

In the United States District Court
for the Southern District of Texas,
Houston Division

Mark Flora,

Plaintiff,

v.

Transocean Drilling (USA),
Inc., et al,

Defendants.

Civil Action No:
4:19-cv-02328
Jury Requested

Defendants' Reply to Plaintiff's Response

To the Honorable Judge David Hittner:

COME NOW, Defendants Gulf Logistics Operating, Inc., Gulf Logistics, LLC, LLOG Exploration Offshore, LLC and Grand Isle Shipyard, LLC, who file this Reply to Plaintiff's Response. In support thereof, Defendants will show the Court as follows:

1. *Defendants' experts were available during the one-month June trial term.*

The Defendants are mindful of the Court's own published Procedures regarding the trial calendar in this Court utilizing a two-month trial term. On September 24, 2019, this matter was set for the *two-month* trial term of "September/October 2020" (Doc. No. 18). However, on June 29, 2021, this matter was re-set for the *one-month* trial term of February, 2022 (Doc. No. 58).

No motion for continuance was filed by Defendants. Defendants' witnesses and experts were ready and available for any trial assignment during the February 2022 term.

On January 20, 2022, *sua sponte*, the Honorable Court reset the trial to the *one-month* trial term of June 2022 (Doc No. 83). No motion for continuance was filed by Defendants. Defendants witnesses and experts were ready and available for any trial assignment during the trial term of June 2022.

At the pretrial conference on June 7, 2022, the Honorable Court asked the parties for any conflicts in the coming months. Plaintiff advised that he had a trip at the end of June planned with his fiancée. Counsel for Defendant GIS advised that its liability expert was out of the country the month of July, and counsel for Defendant LLOG advised the Court that he had two federal trials moving forward in August and that he full expected them to go. The Honorable Court advised the parties that it would work with them on a trial date.

The next day, on June 8, 2022, The Honorable Court entered minutes that jury selection is set for July 25, 2022 (Doc No. 94). Defendant GIS confirmed that its liability expert, Captain David Scruton, was still leaving the country and would be unavailable for trial during that period. Additionally, Defendants notified their joint medical expert of the trial

assignment and were advised that he is unavailable because of a planned family vacation.

2. Plaintiff refused to attend a trial deposition of Defendant GIS' liability expert.

With the trial conflict with the disclosed unavailability of Defendant GIS' liability expert, Defendant GIS tried to arrange for a trial deposition before its expert left the country; counsel for Plaintiff refused to attend.

3. Plaintiff refused to agree to a new trial date where Defendants' experts are available.

Despite Defendants' agreeing to allow plaintiff to designate new experts beyond the deadline to designate such experts, Plaintiff now refuses to agree to a trial date that will allow Defendants to present their experts' testimony to the jury.

4. Failure to grant Defendants' motion will unfairly prejudice Defendants.

In short, while Defendants were prepared to try this case during the trial term of June, a July 25, 2022, trial date leaves one defendant without its liability expert and both defendants without a medical expert. Defendants respectfully request the Honorable Court reset this matter so that Defendants may have a fair and adequate opportunity to present their case. Without the testimony of Defendants' experts, Defendants will be fatally prejudiced.

5. Defendants did not depose their own experts because the Honorable Court does not ordinarily accept deposition testimony in lieu of live trial testimony.

Contrary to plaintiff's assertion, Defendants deposed *all* of plaintiff's experts; it was Plaintiff who did not depose Defendants' experts. Defendants did not take "trial depositions" of its experts because the Honorable Court does not accept deposition testimony where the witnesses are available; Defendants' expert witnesses were available for the June 2022 trial term.

6. Alternatively, Defendants seek approval from the Honorable Court to depose and offer deposition testimony of their expert witnesses

Defendants' medical expert, Dr. Taylor Brown, is available for a video deposition any time after 5 p.m., July 11 through July 22. Defendant GIS's liability expert, David Scruton, is available for a video deposition via Zoom on July 14, 2022 in Liverpool, England, before he boards a cruise ship for two weeks.

Defendants respectfully request that in the event the Honorable Court does not grant their motion for continuance, that it grant its motion to take the depositions of their experts and present the testimony to the jury.

Prayer

WHEREFORE PREMISES CONSIDERED Gulf Logistics Operating, Inc., Gulf Logistics, LLC, LLOG Exploration Offshore, LLC and Grand Isle Shipyard, LLC respectfully request that the Court continue the trial of this

matter to a time convenient for the parties and necessary witnesses, or alternatively, approve the depositions of experts Captain David Scruton and Dr. Taylor Brown.

The Motion for Continuance is not sought for the purposes of delay, but only so that justice may be done.

Respectfully submitted:

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Certificate of Service

I HEREBY CERTIFY that a copy of the above and foregoing instrument has this day been served on all parties through their counsel of record in accordance with the Federal Rules of Civil Procedure:

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/s/John G. H. Davis
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